

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.S.A.No.17 of 2014

N.Parthasarathy

.. Appellant/Petitioner

vs.

P.Saraswathy

... Respondent/Respondent

Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act read with Section 100 of C.P.C. against the judgment and decree dated 30.10.2013 made in HMCMA.No.1 of 2010 on the file of the learned II Additional District Judge, Vellore at Ranipet, confirming the judgment and decree dated 24.11.2006 made in HMOP.No.18 of 2002 on the file of the learned Subordinate Judge, Ranipet.

For Appellant : Mr.S.Mukunth

For respondent : Mr.G.Rajan

JUDGMENT

This Civil Miscellaneous Second Appeal has been directed against the judgment and decree dated 30.10.2013 made in HMCMA.No.1 of 2010 on the file of the learned II Additional District and Sessions Judge, Vellore at Ranipet, confirming the judgment and decree dated 24.11.2006 made in HMOP.No.18 of 2002 on the file of the learned Subordinate Judge, Ranipet.

2. The brief facts of the case are as follows:

The appellant is the husband and the respondent is the wife and they got married on 11.4.1973 at Walajahpet as per the Hindu rites and religious practice. While so, when both the parties entered into the marital status as husband and wife from 11.4.1973, in the course of living, they have given birth to two children one male and another female and as on the date of filing even the HMOP.No.18/2002 under Section 13 (1)(b) of the Hindu Marriage Act, 1955, these children were aged about 27 and 25 respectively. However, as there were frequent quarrels erupted between them during the course of their living as husband and wife, the appellant-husband was constrained to file a petition under Section 13(1)(b) of the Hindu Marriage Act, 1955 before the learned Sub-Court, Ranipet, for dissolution of marriage on the ground that the respondent wife has deserted him in the year 1979 and thereafter, she has not even returned to the matrimonial home.

Though the appellant has established the case before the trial court that the respondent wife had voluntarily left the appellant husband by deserting him long time ago ignoring the fact that two children are grown up and she should come back to lead a normal matrimonial life, the learned trial court disbelieved the claim of the appellant husband and dismissed the HMOP.No.18/2012 by judgment and decree dated 24.11.2006, accepting the reply and explanation offered by the respondent wife that when the respondent wife visited the appellant-husband's house, she came to know that the appellant was residing with one Vasantha after marrying her and that her name was also entered into the Voters List by merely producing the Voters List showing the name of one Vasantha that she has married the appellant-husband and residing in the same residential address wherein the respondent and appellant lived as husband and wife.

3. As against the said judgment and decree passed by the learned Subordinate Judge, Ranipet and aggrieved with the reasoning and conclusion recorded by the learned trial court that the respondent wife has rightly filed Ex.R5 Voters List to prove before this Court that the appellant husband had married one Vasantha and that was also not denied by the appellant husband, HMCMA.No.1/2010 came to be filed by the appellant husband before the II Additional District and Sessions Judge, Vellore at Ranipet, who by judgment and decree dated 30.10.2013 confirmed the judgment and decree of the trial court. Aggrieved by the same, the present Civil Miscellaneous Second Appeal has been filed by the appellant husband.

4. While entertaining the present appeal, this Court has ordered only notice of motion returnable in 3 weeks on 22.4.2014. However, the learned Counsel for the appellant has now requested this Court to frame the following questions of law as Substantial questions of law :

a. Whether the courts below are justified in dismissing the petition for dissolution of marriage when the petitioner/appellant had proved desertion by appellant from 1980 and had no inclination to reunite with him thereby defeating the very concept of marriage.

b. Whether the courts below are justified in dismissing the petition overlooking the fact that the appellant and the respondent are separated for over 25 years and their marriage is irretrievably broken down.

5. Learned Counsel appearing for the appellant submitted that the findings given by the learned courts below that because of the separation made by the appellant by living with one Vasantha which has led to the separate living of the wife has to be taken note of to answer the complaint made by the appellant against the respondent that she deserted cannot be put against her for the reason that when the appellant had

responsible for driving away the respondent by marrying one Vasantha and her name was also apparently shown in the voters list evidently indicating the address of the appellant's house, the question of desertion does not arise, is far from acceptance.

6. Heard the learned Counsel for the respondent-wife and I have also carefully perused the judgments and decrees of the courts below.

7. At the outset, it is to be mentioned that it is not in dispute that Mr.N.Parthasarathy, appellant herein, who is the husband of the respondent wife, aged about 75 years as on today has come to this Court questioning the concurrent findings of facts arrived at by both the learned trial court and the First Appellate Court categorically refusing the request for grant of divorce by dissolving the marriage solemnized on 11.4.1973 at Walajahpet as per the Hindu rites and religious practice. The submission of the learned Counsel for the appellant to reject the findings of facts of both the courts below cannot be accepted by this Court because the appellant has been living with one Vasantha, who is not the legally wedded wife of the appellant and it has been established before both the courts below that there existed a relationship between the appellant and Vasantha as family partners.

8. The appellate court also, while analysing the case of the appellant had discussed the evidence on record and reached a conclusion that it was the appellant-husband who drove away the respondent-wife from the matrimonial home and deserted her. Besides, it was also held that the respondent has justification to stay away continuously from the appellant for the reason that during the subsistence of marriage, he had an affair with another woman and was also living with her. The respondent-wife also in her evidence has stated that when she went to the appellant's house to invite him for her daughter's marriage, she came to know that he married one Vasantha as his second wife and has been living with her. In support thereof, Ex.R5 Voters List to prove the said fact was considered against the appellant. Inasmuch as RW1 Dharmalingam, Assistant Taluk Officer, Walajapet has also in his evidence stated that the list was prepared based on the details furnished by the family members. Therefore, it has been a well recognized principle that a spouse who withdraws from cohabitation what is described as a good cause or a just cause or an effective cause such as adultery or cruelty or the opposite party having an illicit affair outside the marriage, cannot be said to be guilty of desertion, and in such case, it is the conduct of the offending spouse who is the cause for separation and the spouse who remained away from the marital home cannot be said to have acted as animus decerendi.

appreciated the conduct of the appellant that he has been living with Vasantha and that has been evidently proved through Ex.R.5 Voters List, in such circumstances, any pious woman of ordinary prudent would not like to stay with her husband. Therefore, this Court while confirming the concurrent judgments of the courts below, answers the substantial questions of law against the appellant.

10. In the result, the Civil Miscellaneous Second Appeal fails and the same is accordingly dismissed. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional District Judge, Vellore at Ranipet.
2. The Subordinate Judge, Ranipet.
3. The Section Officer, V.R. Section, High Court, Madras.

+1cc to Mr.G.Rajan, Advocate, S.R.No. 59303

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